TRIAL — MODES OF TRIAL — COMPULSORY REFERENCE FOR A PRELIMINARY HEARING. — The plaintiff brought an action at law in a United States District Court for a balance due on an account containing 298 items. The defendant set up by way of counter-claim an account containing 402 items. Upon motion of the defendant and against the objection of the plaintiff, the Court appointed an auditor to define and simplify the issues, hear the evidence, and report the same together with his opinion on the disputed issues, to the Court. The order provided, however, that the final determination of all issues of fact was to be made by the jury at the trial. *Held*, that courts of law have inherent power to make such reference. *In re Peterson*, U. S. Sup. Ct., October Term, 1919, No. 28.

For a discussion of this case, see NOTES, p. 321, *supra*.

BOOK REVIEWS

ESTATES, FUTURE INTERESTS AND ILLEGAL CONDITIONS AND RESTRAINTS IN ILLINOIS. By Albert M. Kales. Chicago: Callaghan & Co. 1920. pp. lxxxvi, 948.

In common with Mr. Kales' previous works, this volume possesses a rare combination of qualities — the product of a diligent and masterful scholarship; it also comes fresh from "the firing line of actual litigation." The distinction has fallen to few law writers in America of occupying the foremost place among the students in a field and of enjoying at the same time a recognized pre-eminence among practitioners in that field. One may surely say that it was Gray's; and when he set out to write a model textbook on the rule against perpetuities, he was singularly successful in stating growing rules in terms which have stood the strains of litigation and heated contest. Mr. Kales is generally recognized to have succeeded Mr. Gray in his premiership in the law of future interests in America, and this treatise promises to do for a larger field much the same kind of service as Gray's for the rule against perpetuities.

Fifteen years have passed since the publication of the author's shorter volume on Future Interests in Illinois, and it has doubtless in that time fulfilled his purpose to make the members of the Illinois bar more intimately acquainted with Mr. Gray's "learning and discrimination in the handling of fundamental problems in the law of future interests." But it has done more — in illuminating so many corners of the law in other states, it has placed every student of the law of future interests in debt to Mr. Kales' own learning and discrimination in handling the same problems. And this debt has grown since the publication in 1917 of Mr. Kales' collection of cases on the law of future interests — a revision and enlargement of Mr. Gray's collection, but greatly improving the latter's analysis and arrangement. Throughout this period, also, Mr. Kales' magazine articles have proved to be indispensable aids to teachers and students, and the present volume contains (p. liv) a welcome bibliography of some thirty of them, used wholly or in part in its preparation. Material in legal periodicals seems to be so neglected by the profession that this treatise would serve a very useful purpose if it had done no more than to make these articles available in book form.

But the volume is much more than a new edition of the author's previous writings. The Introduction to the Law of Estates and Future Interests (in Book I) is largely new and is a very refreshing restatement of the background of our modern law; on some topics, *e. g.*, the nature and destructibility of contingent remainders, the treatment is quite unlike that to be found in the classic English treatises and from a twentieth century point of view decidedly

more rational. Book II on the Interpretation of Writings is a useful attempt to put order into the chaos which has resulted from the modern aversion to precedents in the construction of wills — chaos which has grown worse since Mr. Gray wrote that "when the judges say they are interpreting the intention of a testator, what they are doing, ninety-nine times out of a hundred, is deciding what shall be done with his property on contingencies which he did not have in contemplation"; and the suggestions in the chapter on the Art of Interpretation ought to be at the elbow of every judge who has to make the last guess as to what testators might have intended. The author's own discussion of the problems which arise in determining whether remainders are vested or contingent (c. xv) exemplifies the utility of his suggestions as to methods of construction, and is the most thorough treatment of these problems made in connection with the American cases.

The analysis of the "calculus of estates" (Book III) is an essential introduction to the law of future interests, though it has necessitated some inconveniences in arrangement, such as the scattered treatment of the effect of the Illinois statute on estates tail in widely separated chapters. Book IV on Future Interests and Book V on Illegal Conditions and Restraints on Alienation are adapted from the author's earlier treatise, but with some notable additions. The section dealing with the inclusion of adopted children in limitations to classes is unique and exceedingly useful. The series of problems which may arise in connection with *Claflin* v. *Claflin* is nowhere else to be found. On such a point as the validity of shifting interests created by deed, the argument ought to prove convincing in any state where the common-law principle of no fee on a fee still holds its magic power.

On most of the topics covered, the special treatment of the Illinois situation should be no handicap to the use of the treatise by lawyers in other states; and though primarily a treatment of local law, it is the most useful general treatise yet published in America on the law of estates and future interests. In Illinois, of course, it is a veritable Jarman. In a few instances more attention might have been paid to recent developments in the law of other jurisdictions and perhaps to the published studies of local law in other states; one of these instances is the effect of statutes on estates tail like the Illinois statute (p. 392), in connection with which *Frame* v. *Humphreys* should no longer be cited to show that primogeniture survives in Missouri. The omission of some important topics, such as the effect of the rule against perpetuities on the validity of a contract in a case like *Worthing Corporation* v. *Heather*, is doubtless due to limitations of space.

It would be difficult to dissent from Mr. Kales' conclusion that a deed in Illinois may still operate under the statute of uses if for any reason it cannot be effective as a statutory grant. Yet this raises the question whether our conveyances in America have not by this time achieved an independent position, whether even apart from modern statutes it has not become possible to convey land without resort to the support of the statute of uses. Professor Rood's conclusion that "the statute of uses, the doctrines concerning uses, and conveyances operating by virtue of the statute of uses, have little or nothing to do with the validity of the ordinary conveyance in the great majority of the states," contains the suggestion that our law of conveyancing may by this time have got new roots. And in line with this, one may wonder whether our law of future interests can not also slough off some of its feudal origins.

Admitting the necessity for Mr. Kales' chapter on the Feudal Land Law and for a student's mastering it in order to understand and deal with present-day decisions, the question remains whether something is not to be said for those critics in England who talk of abolishing the law of real property. Is it unthinkable that we shall some day have in America attempts, like those now being made in the pending Law of Property Bill in England, to rebuild the

foundations of this part of our law? In England, these attempts are being made by the most experienced conveyancers, and they date from the suggestions of so eminent a property lawyer as Joshua Williams. In America, the time was certainly not ripe for any departure until Gray and Kales had done their work. But with their assistance, is not the way opening up for a new approach — for some inquiry into the extent to which such rules as those forbidding remoteness and restraints are accomplishing desirable social and economic results, for some modernizing of our common-law heritages which will make their handling less esoteric and their application more certain? Mr. Kales has laid the foundations for some beginnings in this direction in the law of Illinois — where it is needed quite as much as anywhere in the country — and his articles in the first volume of the Illinois Law Review show how alive he is to the need and to the possibility of meeting it constructively.

One first step might be some inquiry into the working of the New York legislation of 1830, which is the only attempt made in America at a thorough overhauling of the law of future interests. Certain it is that we cannot stop with analysis. Some of our law of future interests was imported from England just as the movement for change was beginning to bear fruit there, and so important a jurisdiction as Illinois still keeps rules — as that concerning the destructibility of a contingent remainder — which English law has been free from for the better part of a century. We seem to have arrived at a time when the American law of real property needs Americanization — and the task should be undertaken by the experts of Mr. Kales' understanding and soundness before it falls into less worthy hands.

M. O. H.

A MEMOIR OF THE RIGHT HONORABLE SIR WILLIAM ANSON. Edited by Herbert Hensley Henson. New York: Oxford University Press. 1920. pp. 7–242.

In this little volume the friends of Sir William Anson have joined to express the regard and esteem which the gentle-mannered Warden of All Souls inspired in all who knew him. The composite character of the biography involves some repetition, but the editor has stolen our thunder by pointing out that this defect was inevitable. What repetition there is but accentuates the essentials of Anson's character and achievements and never becomes tedious. A pleasant feature of the book is the printing at the end of each chapter of a letter or two written by Anson himself. In these letters the several memoirs, each from a different pen, find an immediate guarantee of their faithfulness.

Anson's name must be placed high in the law. "The Law of Contract" and "Law and Custom of the Constitution" had become classical before the author's death. These books and years spent in instructing students in the law were his generous contribution to the "revival of legal teaching" at Oxford. It is interesting to note that at about the time Langdell and his successors were developing new methods in legal instruction at Harvard, a little group of men at Oxford (Bryce, Dicey, Maine, Grueber, Anson, Digby) were lifting legal teaching from the rut in which it had lain for the century since Blackstone. Anson's services to education found broader scope than in the law alone. He labored for all the interests of Oxford, as Warden of All Souls, Vice Chancellor, and finally as Burgess for the University. While in Parliament as parliamentary secretary for the Department of Education, although nominally under his chief in the Cabinet, he exercised in reality supreme direction of national education. *Bene natus* he was, Anson gave the lie to *mediocriter doctus* the ancient reproach of Fellows of All Souls.